

August 28, 2000

Ms. Sandra Benson, AICP
Director of Planning and Zoning
Northampton County
P.O. Box 538
Eastville, Virginia 23347

VIA FACSIMILE

Dear Ms. Benson:

I have reviewed the materials relating to the Wright property that you sent me on August 23, 2000. Also on August 23, 2000, I spoke with Dr. Barre Wright regarding this property as she had called me earlier in the day and left a message. For your information, the Wrights have also emailed the Department asking about buffer vegetation and the risk of fire.

This was the first inquiry I have received about the risk of fire from a wooded buffer area. Having reviewed the County's letter and the diagram showing the zones and recommended activities in each zone, I concur with most of the County's recommendations. Section 9VAC10-20-130.B.1 of the Regulations outlines the general criteria for removing vegetation in the 100-foot buffer area. Removal of trees for sight lines, view or vistas is permitted provided that other vegetation that is effective in retarding runoff, preventing erosion and filtering nonpoint source pollution is planted to replace the trees that are removed. To address this requirement, the County recommended to Dr. Wright that additional vegetation be planted in other zones to compensate for the removal of trees for sight lines.

The Department would not support the clearing of the 100-foot buffer for fire protection, as this is not permitted under the Regulations. The County appears to be permitting limited clearing for fire protection and requiring additional restoration of understory vegetation to offset the clearing. The Department is particularly concerned with the permitted clearing to protect the pool from fire. Given that a pool is a water-filled accessory, how is the threat of fire relevant? While clearing for fire protection is not permitted by right under the Regulations, the County appears to be requiring appropriate mitigation for this clearing activity as part of an administrative waiver.

I am also somewhat concerned over the County's directions for Zone 1 where "clearing and grading permitted as per the owner's wishes" is to be allowed. Under § 9VAC10-20-120.2 of the Regulations, indigenous vegetation is to be preserved to maximum extent possible consistent with the use and development allowed. Permitting the owner to "remove any and all vegetation" in this zone appears contrary to this criteria.

Dr. Wright also expressed concern about her perception that the County would not permit the removal of dead, diseased or dying trees or trees along the shoreline for shoreline erosion control. I recommended that she work with a forester, arborist or other trained professional to identify dead, diseased or dying trees and flag them for approval by the County prior to their removal. She asked if an Extension Agent is considered a professional and I recommended she contact the County in that regard. For shoreline erosion control, I recommended that she contact the Shoreline Erosion Advisory Service and have them work with her to develop a shoreline erosion control plan. I also told her that vegetation may be removed as part of a shoreline erosion control project, but that the County would have to review and approve any shoreline erosion control plan.

With respect to the conflicts between the Department of Forestry's (DOF) recommendations for fire safety and the Chesapeake Bay Preservation Act, the Department believes that property owners should be locating structures far enough away from the buffer so that fire is not an issue. The DOF's recommendations are advisory and do not have the force of law, while the Bay Act requirements are regulatory and do have the force of law. While I can empathize to some extent Dr. Wright's concern about fire safety, the issue could also be addressed by relocating or reorienting the proposed house location away from the 100-foot buffer or reducing the footprint of the proposed house, pool and garage.

Given the size of the property and the fact that there is sufficient area for the construction of the house, pool and garage outside of the 100-foot buffer area, the Department would be concerned if the County permitted encroachments or modifications to the buffer area that were not expressly permitted under the Regulations. As I stated earlier in this letter, with the exception of the permitted clearing for fire safety shown in Zone 2, the County's recommendations for the various zones with respect to vegetation clearing, restoration and preservation as outlined in the August 18, 2000 letter to Dr. Barre Wright appear to be reasonable and adhere to the requirements of the Act and Regulations. In Zone 2, the County is permitting vegetative clearing for a reason that is not outlined in the Regulations, and the Department does not support the proposed clearing for fire safety.

Should you have any questions about the contents of this letter, please feel free to call me at 1-800-243-7229.

Sincerely,

Shawn Smith, AICP
Principle Environmental Planner

C: Martha Little